IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1315 of 1999

in

SPECIAL CIVIL APPLICATION No 7023 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES YES

2. To be referred to the Reporter or not? NO :

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO NO

5. Whether it is to be circulated to the Civil Judge? : NO NO

DIPIKABEN RAMANLAL PATEL W/O. MANISHKUMAR JASHWANTLAL PATEL

Versus

STATE OF GUJARAT - AA NAGORI I.A.S. OR HIS SUCCESSOR

Appearance:

MR BM MANGUKIYA for Appellant

MR PREMAL JOSHI AGP for Respondent No.1 & 2

MR DC DAVE for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE D.H.WAGHELA

Date of decision: 11/01/2000

ORAL JUDGEMENT

The appellant being aggrieved by the order passed by the learned Single Judge in Special Civil Application No.7023 of 1999 has preferred this appeal. The order is at Page-J. However, reading the language of the paper, which is produced on record, it appears that there are number of mistakes and the correct order has not been placed on record. Suffice it to say, the petition has been dismissed and the same was filed without joining at the place where appointment has been offered. It appears that the father-in-law of the petitioner submitted an application which was accepted by the Chairman inter alia stating in the application itself that the husband and the wife should be placed either at Dharampur or at Umargaon.

2. The grievance made by the learned counsel appearing for the petitioner is that the petition ought to have been admitted. It is submitted that vide Annexure-C at page 26, by the order dated 1.6.1999 the petitioner was appointed as a Vidya Sahayak and was required to join at the place mentioned therein. The order of appointment has been made by the District Primary Education Officer, the appointing authority. It appears from the contents of the letter at Annexure-E dated 15.6.1999 that the said order was received by the petitioner on 7.6.1999. In the letter dated 15.6.1999 at Annexure-E, a request was made that she is not able to join duties and therefore the period should be extended till 15.7.1999. She also stated that if her health would improve before that date, she would join her duties earlier. This letter was addressed to the Taluka Development Officer, Dharampur, District Bulsar and not to the appointing authority, namely, District Primary Education Officer. On 21.6.1999, vide Annexure-F, the father-in-law of the petitioner moved an application addressed to the Joint Secretary, Education Department, inter alia pointing out that the place where the petitioner is posted is far away and she will have to stay alone there, and, therefore, for the purpose of security it is better that both the husband and the wife are placed at one place. It appears that on this letter an endorsement has been made by the Chairman, Vidya Sahayak Committee and Joint Secretary, Department of Education, Government of Gujarat, that both of them should be placed either at Dharampur or Umargaon. The original letter is not produced on the record. However,

a xerox copy has been shown to us. Mr. Mangukiya states that the original application addressed by the father-in-law of the petitioner is not with him as it was addressed to the Joint Secretary, and, according to him, thereafter, this letter has been communicated to the District Primary Education Officer. The xerox copy shall remain on record. It appears that thereafter on 16.7.1999, again an application was moved wherein it was pointed out that the Chairman has passed an order that the husband and the wife should be posted at one place, but on account of elections, that request was not accepted.

3. Suffice it to say that despite the order which was issued in favour of the petitioner on 1.6.1999, which was received by her admittedly on 7.6.1999, the petitioner did not join her duties and therefore the order came to an end. Nothing is placed before us indicating that the application forwarded to the Taluka Development Officer on 15.6.1999 at Annexure-E was forwarded to the District Primary Education Officer and that he took any decision in the matter. If no application was addressed to the appointing authority and if the appointing authority had no occasion to consider the request made by the petitioner, the order would expire automatically after the 7th day of the receipt of the letter and in any case when the remark for posting at the alternative post is alleged to have been passed by the Chairman, the order came to an end before by efflux of time. If the order is not effective at all, then, there is no question of reviving that order, may be that the Chairman may not be aware about the fact that the order had come to an end in view of the provisions made in the appointment letter itself. Even, in the application subsequently forwarded to the Chairman, there is nothing to indicate that the application which was forwarded by the applicant for extension was granted. If there was a reference in the application, one can safely say that the Chairman was authorised under the Resolution to pass such an order. Mr.Mangukiya submitted that it is a case of insubordination where the higher officer, namely, the Chairman has passed the order which has not been carried out and therefore the matter should be viewed very seriously. If the Chairman was informed in the letter itself that after the application which was given by the petitioner, she made an application for extension on account of her ill-health and it was granted by the District Education Officer, the matter would have been quite different. But it appears that having no knowledge about the same, the Chairman might have made an endorsement in good faith that the order was in force.

4. It is also stated before us by the Government as well as the concerned respondent that the appointment has come to an end as it stood cancelled in terms of the appointment letter itself. However, if the Chairman has exercised his powers in consultation with the Committee, and, if the appointment order has not been cancelled, it would be open to reconsider the case and not otherwise. With this observation, we dismiss this L.P.A. Notice is discharged with no order as to costs.

(KMG Thilake)

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